Cambridge University Press et al v. Patton et al
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CAMBRIDGE UNIVERSITY PRESS, et al.,	)	
Plaintiffs,	)	
vs.	)	Civil Action File No. 1:08-CV-1425-ODE
MARK P. BECKER, in his official capacity as Georgia State University President, et al.,	)	
Defendants.	)	

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Videotaped deposition of DIANE BELCHER, taken on behalf of the plaintiffs, pursuant to the stipulations contained herein, before Teresa Bishop, RPR, RMR, CCR No. B-307, at 104 Marietta Street, 6th floor, Room 3, Atlanta, Georgia, on Thursday, May 7, 2009, commencing at the hour of 8:55 a.m.

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KENNITH DRAKE, VIDEOGRAPHER

- - -

THE VIDEOGRAPHER: This will be the videotaped deposition of Diane Belcher taken by the plaintiffs in the matter of Cambridge University Press, et. al. versus Mark P. Becker in his official capacity as Georgia State University president, et. al.

The date is May 7th, 2009. We are on the record at 9:14:23.

DIANE BELCHER,

having been first duly sworn, was examined and testified as follows:

MS. GARY: Just like to state for the record that this morning we produced to Plaintiffs' counsel some documents that were given to us by Jodi Kaufmann including her completed various checklists.

EXAMINATION

BY MR. LAWSON:

Q. Good morning.

A. Good morning.

Q. Would you state your name and address for the record before we get started.

A. Diane Belcher. 1191 Berkley Road, Avondale Estates, Georgia.

Q. I'm Todd Lawson. I'm an attorney representing

the plaintiffs in this action who are Cambridge University Press, Oxford University, Sage Publications.
Have you been deposed before?
A. No, never.
Q. First time. Did you meet with your counsel prior to the deposition?
A. Yes. In fact just now.
Q. Did you meet earlier in the week or before that?
A. Yes.
Q. For how long?
A. Gosh, I don't know.
Q. Approximately is fine.
A. A few hours.
Q. Okay. And who was in attendance?
A. Laura and -- it was mainly Laura. There was another I think a partner who was there at the beginning, but he left.
Q. Okay. So did they go through how this will work generally?
A. Yes. They explained the procedures because it was all new to me.
Q. Okay. Well, then I won't dwell on that. But a couple things. If you need a break at some point, just let me know and we can accommodate you. If you

don't understand the question I ask, please ask me to clarify it, I'll be happy to do that.

A. I will.

Q. Let me ask you this. Have you seen the complaint in this action?

A. No, I haven't.

Q. Okay. Are you aware that you were identified in the complaint?

A. I am aware of that.

Q. Okay. And are you aware of the specifics of what was alleged in terms of your course?

A. No. I don't know that.

Q. Okay. Did you review for this deposition any of your old syllabi for your courses?

A. I did when I was asked to produce them.

Q. So you reviewed the ones that were produced to us as part of the litigation?

A. Yes.

Q. Okay. And as part of that, did you go back and look at any of the postings that you've made on the university EReserve system?

A. The postings?

Q. The readings excerpts.

A. Actually I can't because they're not available after the term ends.

Q. Okay. And you have --
A. They're not accessible to faculty or students.
Q. You have some that are currently being used on the system, is that right?
A. This past semester I did, yes.
Q. You mentioned the syllabi that you reviewed. Did you gather documents for this litigation in any way?
A. I gathered the documents that we were asked to provide.
Q. So you --
A. Which was e-mail and -- with certain key words.
Q. Right. Okay. So you did that search yourself?
A. Actually I was assisted by a graduate research assistant in the department because it was very time consuming, and I actually didn't know how to do all the searches.
Q. And you produced all the syllabi to us that you could find for your courses?
A. Oh, yes.

(Plaintiffs' Exhibit No. 109 was marked for identification by the reporter.)

BY MR. LAWSON:

Q. I'd like to mark or hand you what's been marked Plaintiffs' Exhibit 109.

A. Okay.

Q. Do you recognize this as your CV?

A. Yes.

Q. Okay. Just want to ask you a few questions about this.

A. Okay.

Q. And I will just for the record, this was taken from the GSU web site.

A. Okay.

Q. Not something that was produced as part of the litigation. Does this generally accurately lay out your educational and professional experience?

A. Yes.

Q. Okay. Anything in it you're aware of that's incorrect?

A. I don't know how up to date this one is.

Q. When did you last update it?

A. I'm always updating it. Last week probably.

Q. Okay. And then when you update it, do you post the new updated version?

A. No. No. It only gets reposted about once a year.

Q. Once a year. Okay. Do you recall when the last time that happened?

A. I'm sorry, I don't.

Q. That's okay. If anything as we go through just a few questions here, you know if there's been updates or changes, just let me know as we discuss it.

So this is correct then that you got your masters and Ph.D. from Ohio State?

A. Yes.

Q. And am I right that as a general matter you taught at Ohio State after getting your Ph.D. for --

A. About two decades.

Q. And then came to Georgia State?

A. That's right.

Q. And started here in 200 --

A. '3.

Q. And your Ph.D. is in English?

A. That's right.

Q. And what department are you in now with Georgia State?

A. It's called applied linguistics/English as a second language.

Q. Can you just tell me generally what that department teaches and does?

A. Applied linguistics is a field that takes linguistic theory and applies it. And the application usually has to do with the teaching and learning of languages. So we teach people how to teach language. And our courses involve linguistic theory and teaching methodology, language teaching methodology.

Q. And is that a graduate department or an undergraduate department or both?

A. It's both.

Q. And do you teach both under grads and graduate students?

A. I sometimes teach undergraduates. I mainly teach graduate students.

Q. And then those graduate students then go on and --

A. The master's students go on to teach language, usually English as a second language. The doctoral students go on to become academics.

Q. It says here that you're the director of graduate studies?

A. That's right.

Q. What's involved in that position?

A. I oversee recruitment to the master's program and the Ph.D. program. Scheduling of courses. I assign advisors, students to different advisors. I'm involved in a faculty committee called the master's studies committee and the Ph.D. studies committee and we make decisions about the curricula for both the master's program and the Ph.D. program.

Q. How many faculty are in the department?

A. Graduate faculty I think we have eight. I'm not sure that's exactly right, but it's about that.

Q. And when you say graduate faculty, what are you distinguishing?

A. We also have a number of lecturers in our department. Those are not tenure track faculty.

Q. And do your graduate students also teach undergraduate courses in the department?

A. Some of the doctoral students do, yes.

Q. And do you -- is your department distinct or do you cross over, you know, are your courses cross listed with other departments?

A. Some are. Some are cross listed. Some education students take our classes and some modern and classical languages students take our classes. Those are the two main areas that we cross over with.

Q. Okay. And you are in addition to being the director of graduate studies a professor, too?

A. Yes.

Q. And that's a tenured position?

A. Yes.

Q. When did you get tenure?

A. Actually last year.

Q. Congratulations.

A. I may have been the oldest person to get tenure for the first time.

Q. In your role as director of graduate studies, you mentioned some of the duties you have. Do you set policies for the department in any way?

A. I can't set policy as director of graduate studies. Policies would be set -- there's an executive committee, which I've not been a member of, the department executive committee. And policy is, for the graduate program is there's -- we have graduate faculty meetings and the entire graduate faculty would determine policy.

Q. And this executive committee, who's on that? I mean generally.

A. Three tenured faculty.

Q. And what types of policies does that executive committee set?

A. You know, I've never been on that committee so I actually don't know if policy is the right word for what they do. They make merit recommendations for raises. And they give policy advice to the chair. So I don't --

I would have to look at our bylaws to see what exactly the responsibilities and duties of the executive committee are. And since I've never served on it I've never read the bylaws for the executive committee.

Q. Let me ask you more directly. Let's talk about copyright policy for example.

A. Okay.

Q. Would you or this executive committee be involved in setting any type of copyright policy for the department?

A. I've never heard of that happening.

Q. Okay. And are you aware that that happens elsewhere in the university?

A. No.

Q. Okay. Have you ever dealt or read or been involved with the university copyright policy in any way?

A. Just recently.

Q. Okay. And when you say just recently, what happened?

A. Well, you know, there's a revised copyright policy that has been put together by the University System of Georgia and we have received several e-mail messages that have apparently gone to the entire university about the revised policies with a link to the new web site.

Q. And have you personally received one of those e-mails?

A. Yes.

Q. Did you receive an e-mail -- was there an e-mail in the nature of a general announcement that a new policy had been --

A. Yes. That's what I remember it at any rate.

Q. And you read that e-mail?

A. Yes.

Q. And did you click the link?

A. The first time I saw it I didn't, but more recently we've gotten a message and it mentioned the new EReserves policy and I did look at that.

Q. Okay. You read through the policy?

A. I don't know how closely I read it, but I did read it to some extent. Maybe not word for word.

Q. And was this subsequent e-mail that you just mentioned, was it again an announcement of the new policy or did it say something different?

A. It was saying from now on any time anything is put on EReserves there's a whole new set of guidelines.

Q. So it's your understanding that that policy is now in effect?

A. In effect.

MR. LAWSON: Can we mark as Plaintiff's

110 a document -- and it relates to our back and forth yesterday. Just for the record, this isn't marked, but this has been produced back with the Bates number GAstate 0041401.

(Plaintiffs' Exhibit No. 110 was marked for identification by the reporter.)

BY MR. LAWSON:

Q. This is an e-mail from Cynthia Hall to various people.

Now, Professor Belcher, you're not named actually as one of the recipients. But did you receive an e-mail like this at some point?

A. About the workshop?

Q. Yeah.

A. Yes.

Q. When did you receive that?

A. Actually I think I received two e-mails about the workshop. One may have been for a workshop on the 20th, and I think there was another workshop on the 27th.

Q. April 20th?

A. Right.

Q. And did you attend --

A. I attended one of them, yes.
Q. Which one did you attend?
A. The first one.
Q. And who conducted the workshop?
A. Cynthia Hall.
Q. How many people were at the workshop?
A. A lot of people. It was a very full room. There may have been 25 to 30 people.
Q. Across various departments?
A. From all over the university. Different colleges in the university including the college of law.
Q. So to your knowledge there have been two of these workshops that have been offered?
A. Yes.
Q. Okay. Did any of your colleagues in your department attend with you?
A. Another colleague attended the second one.
Q. Who was that?
A. Susan Coleman. At least I was told that she was planning to attend.
Q. Okay.
A. So I don't know if she actually did.
Q. Okay. And at that, at the training session was there a PowerPoint presentation that was provided?
A. Yes.

Q. Did you have any questions when you participated in this?

A. I did have questions.

Q. Do you recall what those were?

A. I don't recall specifically. But I do recall one. One had to do with Cynthia was going over sort of like a general overview of what copyright is and there was something about authors usually having copyright. And I asked about that because as an author I usually don't own copyright. I usually end up signing it over to the publisher. And Cynthia agreed that for many academic publications in fact authors give copyright ownership to the publisher, which was my experience.

Q. We'll talk about that in a minute. I know you have quite a few publications listed on your CV.

Did you have other questions apart from that?

A. I did. And I can't remember exactly what they were.

Q. Did you or have you since attending that workshop taken a look at the materials that you currently have posted on the EReserve system to see if they comply with the new policy?

A. I really haven't done that. I posted for this semester -- actually I had to get those materials ready the previous semester. And what -- everything -- no, it wasn't everything, but a great deal of what I posted had already been archived.

Q. So just --

A. So I was reactivating what was already archived.

Q. Just so the record is clear, you are talking about spring 2009 semester?

A. Right. This semester that has just ended.

Q. So you didn't go back and review that material to see if it was complying with the new policy?

A. No. No.

Q. And the reason is because that had been posted some months before?

A. It had to be taken over to the library. Actually they call for it in the preceding semester. So in order to have it ready at the beginning of spring semester which began in the beginning of January I had to take it over well in advance.

Q. I see.

A. And at that time the policy was the old policy.

Q. Got it. Was it suggested to you at this meeting that you should for the current semester review your postings to see if they comply with the policy?

A. No. And I'm sure the reason -- well, I don't know the reason. But I would assume classes were ending.

Q. When did the spring semester end or has it ended?

A. At the end of April. It's over.

Q. Okay. And is it your understanding that your spring 2009 EReserve page is now archived or is it still available to students?

A. I don't know exactly when the access ends, but I know that after this, whatever they consider the actual end of the semester as soon as they consider it over it's no longer available to students and it's not available to me.

Q. And that is available, however, if I understand this right, correct me if I'm wrong, if you teach the class in a later semester they can reactivate it?

A. They can reactivate it. That's my understanding, too.

Q. And is that what you did in the spring 2009 semester?

A. For most of the readings, yes.

Q. Are you teaching in the Maymester?

A. No.

Q. Are you teaching in the summer semester?

A. No.

Q. Is that a change from past practice or do you not usually teach in the summer?

A. I have taught in the summer, but I'm not teaching in the summer here this year.

Q. Are you teaching somewhere else?

A. I'm teaching in Hong Kong.

Q. What about this fall?

A. I will be teaching here at GSU.

Q. What will you be teaching this fall?

A. I will be teaching a course called issues in second language writing and a course called EFL, that's English as a foreign language practicum.

Q. Do you happen to know the little code numbers for those courses, AL and some number?

A. Oh --

Q. If you don't I don't want --

A. Yeah, the undergraduate course I think is AL4161.

Q. That's the practicum?

A. Yes. Yes.

Q. Okay.

A. And I'm sorry, I don't remember the number for issues in second language writing.

Q. Tell me more generally about the courses that you teach on a regular basis, what are those courses?

A. The two courses that I just mentioned. I also teach a graduate student practicum. I teach a doctoral class called qualitative research methods. I teach intercultural communication and --

Q. Actually if you want to pull out your CV, I think there's a list and you don't need to go through the whole list.

A. Okay. I teach the courses --

Q. Is that an accurate list of the courses?

A. Yes.

Q. And the practicum, is that AL8900?

A. That's the graduate practicum, yes.

Q. And that's a course you teach on a fairly regular basis?

A. Sometimes it's once a year in consecutive years and sometimes it's been every other year.

Q. But you've taught it several times?

A. Yes.

Q. Will you teach it again?

A. Probably.

Q. And am I right that there are some other professors that teach that same practicum?

A. A number of other professors, it's offered every semester.

Q. And who are those other professors?
A. John Murphy is one person. And the others are rotating. They don't teach it on a regular basis.
Q. And is that taught by full time faculty or lecturers?
A. Sometimes lecturers teach it.
Q. Is there a common syllabus used for the course?
A. There is, to a large extent we all use variations on the same syllabus.
Q. And what are -- the variations are in the nature of what readings are assigned or what are the variations?
A. Generally that. In fact I changed the required textbooks this semester. But the EReserve readings I used were things that were already archived for the most part. I might have added one or two.
Q. We'll take a look at one of those in a little bit.
A. Okay.
Q. When -- do you know when other professors teach the class, is there a single or a common EReserves course page that's used or does each professor teaching it have their own course page?
A. I think we've been using essentially the same

EReserve readings. Or we choose from the same menu of EReserve readings that have been archived.

Q. Let me -- I didn't ask that question very well. Let me try again.

A. Okay.

Q. You are aware that there's something on the EReserve system called the course reserves page, are you familiar with that?

A. Not exactly sure what you mean by the course reserves page.

Q. Let me hand you something that's been marked before as Plaintiffs' Exhibit 64. You recognize this?

A. Okay. This looks like what you access when you get into EReserve for a course.

Q. Right. Okay. Now, this is for a different course, 8961, I recognize.

My question is with respect to the practicum 8900, if when say Professor Murphy teaches it, if he essentially uses the same course reserves page that looks like this that you would use when you teach it or if there are four or five different ones for each different professor that teaches the course?

A. I think it's -- it's essentially the same works. But we choose whether or not to use them.

For instance, when I taught the practicum this past semester I asked them to just reactivate what had been used the previous semester, and that's what I used.

Q. And it's your understanding that, say, if Professor Murphy taught it in the fall that he would have them reactivate that same page?

A. I assume. But I really -- I've never checked his course reserve page when he uses it.

Q. Okay. Now, is this course 8961 another course that you teach fairly commonly?

A. I taught it twice.

Q. Twice. And is that one that you will be teaching again at some point?

A. Probably in another year.

Q. Okay. If you could go back to Exhibit 109, your CV.

A. Okay.

Q. And just put that one aside for now.

A. Okay.

Q. Turn to page 2, please.

A. Okay.

Q. There's a list here of your publications.

A. Uh-huh.

Q. And the first category is called edited books?

A. Right.

Q. Just tell me what's in that category?

A. These are you might call them anthologies, they are books that I edited and each chapter is a contribution from a different author.

Q. Okay. Were you the person who selected what the contributions would be?

A. I invited the contributors to contribute.

Q. How did you decide who to invite?

A. It really varies. For instance for the 1995 book "Academic Writing In A Second Language", we actually had a call for contributions and people sent us abstracts and we chose from the abstracts.

For the 2001 "Linking Literacies" book that came out of a conference. So we had a small conference at Ohio State and the conference presenters were invited to contribute to the book.

And another one, "The Oral/Literate Connection" came out of a colloquium that I organized at the TESOL, annual conference for Teachers of English to Speakers of Other Languages.

Q. I wondered what that stood for.

So when you are involved in editing a book like those in this category, do you have a contract with the --

A. Yes.

Q. And are you paid under that contract?

A. Royalties.

Q. Okay. And by royalties, you mean you get a certain percentage for sales of the book?

A. Right.

Q. And are you aware of whether you also get a percentage of license fees or other uses that might be --

A. I'm not aware of that.

Q. Just sales, to your knowledge?

A. As far as I know.

Q. So for example if the book, if a chapter of the book were permissioned for use in a coursepack and a license fee were paid, it's not your understanding that you would get any share of that?

A. I never asked about that. So my statements only mention books sold. So I'm assuming that my royalties are only based on the numbers of books sold.

Q. Are you involved at all in the negotiations with the contributors?

A. No.

Q. Okay. Do you know whether they're paid for their contributions?

A. If they're paid it's a very small percentage of the royalties. But they are sent their own letters of agreement directly by the publisher.

Q. And your understanding is they're paid on a percentage basis as opposed to, say, a flat fee of some kind?

A. I think so, but I haven't looked at their agreements.

Q. Well, let's look at page 3.

A. Okay.

Q. There's a section here called chapters in edited books?

A. Yes.

Q. I take it these are situations where you've contributed a chapter to the kind of books we were just talking about?

A. Yes.

Q. So in those situations, have you had a contract with the publisher or with the editor of these books?

A. I don't know if it would be called a contract. But it was some kind of -- some kind of statement that I had to sign.

Q. Okay. And were you paid for these?

A. I wish I had been. A few of these chapters are actually chapters in books that I edited and for those I did receive royalties.

Q. Royalties separate from the royalties you receive for being the editor?

A. No. No. I didn't receive separate royalties for having contributed chapters.

For -- gosh, I'm trying to remember. It seems to me what I often received has been something like a discount, like I can buy books from that publisher at a significant discount. Well, you know, 20 percent off or something like that.

Q. So you don't recall for any of these situations in which you've contributed a chapter being paid a set amount or receiving a royalty payment for those contributions?

A. If I did it was very small.

Q. By very small, what ballpark are you talking about?

A. Less than $50.

Q. On the edited books, which of those was the most successful for you monetarily?

A. Gosh, it's really hard for me to say. Probably "Academic Writing In A Second Language" just because that's been out the longest.

Q. And just again ballpark, can you give me a sense of the rough earnings that you've received from that?

A. Since 1995 probably under $200.

Q. So the others would be something less than that?

A. Right. Unfortunately.

Q. And you mentioned before it's your understanding that you may have assigned the copyright to the publisher, is that right?

A. That's the usual case.

Q. Do you recall that from these edited books signing something that gave the copyrights to --

A. I think that was part of the contract.

Q. And --

A. If you look at the books and you open them up and you look at the copyright it will say University of Michigan Press or whatever the publisher is.

Q. Are you aware in -- and let's stick with the edited books category.

A. Okay.

Q. You mentioned the rough royalties that you received. Are you aware of the income that the publisher of these books received?

A. No, I'm not.

Q. Do you have any knowledge generally of the economics of the publishing industry?

A. To some extent because I edit a book series for the University of Michigan Press.

Q. Tell me about that. I'm looking to see if that's here somewhere.

A. Yeah, it is somewhere. Under editorships, look at page 8. And then look at page 9, series co-editor with Jun Liu, "Michigan Series On Teaching Multilingual Writers".

Q. Tell me what's involved in that effort?

A. We invite people to write small books on topics on the teaching of second language writing. And we review the proposals and we advise Michigan on who should be awarded a contract. And then we also help vet -- assuming somebody is awarded a contract, we help vet the manuscript when it's in progress. We advise the author.

Q. So when you say we, are you working with staff members of the press?

A. My co-editor with the series, Jun Liu.

Q. And any business persons from the press itself?

A. The acquisition center.

Q. And does that involve, that process involve sales forecasting and budgeting and things like that for the book?

A. Not on my part.

Q. So tell me about you said through this effort you had some insight into the economics?

A. Because we get a report, an annual report on how the books that have been published in the series are doing.

Q. I see. And what's on those reports?

A. Tells us exactly how many copies have been sold.

Q. And the amounts, dollar amounts?

A. And the amount of money generated, I think so.

Q. What is the range of number of sales of these books?

A. Gosh, it's in the hundreds.

Q. And do you have a sense of whether they're sold to libraries who then make them available to students or are they the kind of books where students or graduate students will buy them?

A. They're sold to libraries, university libraries, but some of them are adopted for courses.

Q. So do you view that as a positive or a good thing if it's adopted for use in a course?

A. It's very good for the sales of the book.

Q. And do you have certain targets that you need to meet or you set in terms of how many sales?

A. No.

Q. So what would the result be if there were no adoptions for these books, would you continue to be able to publish them?

A. You mean would the series continue or --

Q. Yeah.

A. I'm not quite sure I understand.

Q. Let me ask it again. If -- I think you said, and correct me if I'm wrong, that you sold them to libraries, but they're also adopted for use for purchase by students?

A. And also by individual professionals for professional development.

Q. And my question is, if it were the case that there were no longer -- professors stopped assigning them for purchase by students in courses, would that jeopardize the continuing existence of this series of books?

A. That's a good question and it's very hard for me to answer. Some of these books I know have been adopted for courses and others have not.

Q. Okay.

A. And the publisher is still interested in bringing out more books in this series.

Q. Do you have a sense generally of whether it's economically feasible for -- let's use this series -- to survive on library purchases alone? I guess that's the gist of the question.

A. I don't know.

Q. Do you know whether with these books there are payments made for permissions or licensing of excerpts of the book?

A. I don't know.

Q. You've only seen reports that indicate sales of the entire book?

A. The only thing I know about permissions is that I got permission to use a chapter of one of these books before it was published.

Q. And why did you -- you sought that permission?

A. Yes.

Q. And why did you seek permission to use that chapter?

A. I was hoping that the book would come out in time for the course I was teaching but it did not. And I had access to the manuscript because I was editing it. And I contacted Michigan and I said -- I asked if I could have permission to use one chapter of the manuscript. And they sent me sort of a formal agreement that I had to agree to about limited access and only for classroom use and that sort of thing.

Q. Was that agreement for use on EReserves or for use in a hard copy coursepack?

A. I don't think it specified. It just --
Q. How were you using it?
A. And that's what I can't remember. I think I either gave my students photocopies or I created a PDF.
Q. Now, you -- again we'll get into this in more detail. But you place works on EReserves fairly regularly, correct?
A. I have.
Q. And it's not always the case that you seek permission from the publisher to put those works on EReserves, right?
A. I have never sought permission except for -- but actually I didn't put that one particular thing on EReserve, I think.
Q. Well, why in this case did you ask for permission when you haven't asked in other cases?
A. It was an unpublished work.
Q. It was unpublished. Was there any other reason or was it just that?
A. It was unpublished.
Q. Okay. And why does that matter?
A. My understanding is that generally for fair use that involves published works, not unpublished works. And --
Q. You're saying if it's unpublished it's less

likely to be a fair use?

A. I'm saying that you -- if I know that it's unpublished and it's about to be published, then I'm assuming the publisher will want to know and will want to decide whether or not I should use it.

Q. Okay.

A. Which was why I contacted Michigan.

Q. Did you consider that your use despite the fact that that work was unpublished at the time could still be a fair use?

A. If they thought it was fair then I thought it was fair.

Q. Let me --

A. Yes. Yes.

Q. You thought -- let me ask the question again. And I think we may be miscommunicating.

A. Okay.

Q. You indicated that because it was unpublished you thought you should contact them?

A. Right.

Q. Did it cross your mind or did you consider whether you could have used the work in any case, that it could have been a fair use despite the fact it was yet to be published?

A. Oh, I see. I just assumed that I needed their permission.

Q. Just for the record, let me --

(Plaintiffs' Exhibit Nos. 111 and 112 were marked for identification by the reporter.)

BY MR. LAWSON:

Q. Can you take a look at these exhibits marked Plaintiffs' 111 and 112 and confirm that this is the permission that we've been talking about?

A. Yes. Yes.

Q. You can set that aside.

There's a category on your CV called articles in refereed journals?

A. Yes.

Q. What's in that category?

A. Articles that have appeared in refereed journals.

Q. And what does that mean, in referred journals?

A. It means that there are referees who determine whether or not the article is accepted or rejected.

Q. And that's to be distinguished from a journal that doesn't have people that do that or -- I mean --

A. Right.

Q. Are there not referred journals?

A. Some journals solicit articles and they don't send them out for peer review. Referred journals use peer review.

Q. And did you include this as a category specifically because there's some value in having been published in a referred journal?

A. Yes.

Q. And what is that value?

A. For tenure and promotion it's considered more prestigious to have published in referred journals.

Q. When you publish in a referred journal, are you paid for that?

A. No.

Q. The compensation comes in the form of your reputation and your career advancement?

A. Right.

Q. And do you sign any sort of agreement when you publish in one of these journals?

A. Yes.

Q. What's the nature of the agreement?

A. I think it involves copyright.

Q. Does it --

A. The journal then owns the copyright. Or the publisher of the journal I should say.

Q. Are you aware of the economics of these types of journals, how they earn their money?

A. Yes.
Q. Tell me what you know about that.
A. I was the editor of an Elsevier journal for 10 years. And Elsevier earns its money for the journals through subscriptions.
Q. Subscriptions sold to universities?
A. Individuals and institutions.
Q. What was the journal that you edited?
A. English For Specific Purposes.
Q. What were the years that you edited that?
A. 1998 until last year.
Q. Are you editing any journals at the moment?
A. Yes.
Q. What are you editing now?
A. TESOL quarterly.
Q. Who's the publisher of that?
A. The TESOL organization. It's a professional organization.
Q. And is that also offered through subscription?
A. Yes.
Q. Are any of the journals listed in this referred journals category owned or operated by Sage or Cambridge or Oxford, to your knowledge?
A. I don't know about some of these earlier journals from like the late 80s and early 90s. But

everything since '94 I don't think any of them is a Cambridge or Oxford journal.

Q. Okay.

A. They're mostly Elsevier journals.

Q. Let me ask, we've talked a bit about the economics of the publishing industry here. When you've provided your students with EReserve excerpts without any sort of permission, did you consider whether that would have any impact on the finances of either -- you know, the publisher providing the work?

A. Are you talking about articles, excerpts from articles, journal articles?

Q. Well, if there's a difference in how you thought about it, please tell me.

A. That's what I'm not sure. I'm just trying to clarify your question.

Q. Yeah, let's talk about excerpts from books.

A. From books.

Q. For example, the Sage handbook that I think you've --

A. Yes.

Q. -- used.

A. Yes.

Q. When you provided chapters from the Sage handbook without seeking permission from Sage or paying a royalty fee, did you consider whether that would have any impact on the economics of Sage's business?

A. At the time --

Q. Uh-huh.

A. -- I don't remember thinking very specifically about that.

Q. Do you have a sense now of what the impact --

A. Yes.

Q. What is your sense now?

A. Oh, of the effect?

Q. Yeah.

A. Well, I have a sense now that as being something I should think of.

Q. And have you --

A. Because of the new policy.

Q. Have you come to any conclusion on what that effect is?

A. For those particular chapters?

Q. Yeah.

A. I don't think it had a major affect.

Q. Okay. And why not?

A. For one thing I was using chapters from the second edition, the 2000 edition. This was in 2007, the third edition had already come out in 2005.

Q. Okay.

A. So the second edition was no longer being marketed by Sage.

Q. Was it no longer for sale?

A. I'm sure you could get used copies. I know it's not now. The last time I looked on Amazon I saw five used copies.

Q. And you were using excerpts from the third edition?

A. I can't -- I didn't have it on my syllabus, so I can't -- I don't think I had the third edition. I think almost everything if not everything was from the second edition. Because I had trouble obtaining a copy of the third edition. I think our library didn't own it at the time.

Q. Okay. Rather than having a memory test we'll look at some syllabi in a bit and talk about that more.

A. Okay. I know my syllabus says 2000 for all those chapters.

(Plaintiffs' Exhibit No. 113 was marked for identification by the reporter.)

BY MR. LAWSON:

Q. We'll mark if we could as Plaintiffs' 113, a document that has the Bates number Georgia State 0046249.

Professor Belcher, do you recognize this document?

A. Yes.

Q. Can you tell me what it is?

A. It's a syllabus for a course I taught this spring.

Q. And that course is?

A. Practicum in ESL/EFL teaching.

Q. This is the one we were talking about earlier, the graduate?

A. This is the graduate level practicum that I teach.

Q. How many students were in this course?

A. I think there were seven.

Q. Seven.

A. It's limited to 10.

Q. When you've taught this course in the past, has the number of students been in that --

A. It's never been more than 10.

Q. You see there's a section here on the first page called required reading materials?

A. Yes.

Q. And then there are two books listed?

A. Right.

Q. Are those books books that students purchase for the course?

A. Yes.

Q. Okay. And do you coordinate with the bookstore to have them made available for purchase?

A. Yes.

Q. I think you said you made a switch?

A. Yes.

Q. What was the switch that you made?

A. There had been a book by Richard & Lockhart published by Cambridge which I replaced with instead I use the Farrell book published by Continuum.

Q. Richards & Lockhart book was "Reflective Teaching In Second Language Classrooms"?

A. Right.

Q. Why did you make that switch?

A. I consider it pretty much out of date now. It was published in 1994, although I think there are still some useful chapters, and I think I put two chapters on EReserves.

Q. So when you used the book in the past did you use more than those two chapters?

A. When I used it in the past I used the entire book.

Q. And then this semester you replaced the entire book for purchase and then instead put a couple of the chapters on EReserves?

A. Right. Right.

Q. Did you seek permission from the publisher to put those two chapters on?

A. No.

Q. So in the past students would buy the book for use in the course and now they're getting excerpts for free?

A. Through EReserves, they're getting access to excerpts through EReserves.

Q. And by access they're able -- you understand --

A. Password protected, limited access.

Q. Right. And it's limited how?

A. It's limited to that semester in which they're in the course.

Q. But those students, is it your understanding that those students can download and print out the excerpts?

A. They can.

Q. And they could keep them as long as they wanted, correct?

A. They could. But the tendency seems to be for that to happen less often as students consider that an ungreen thing to do. And they are also getting more comfortable with reading things online. So I see less downloading. When people download they often bring the copy to class and I don't see as much of that any more.

Q. Has that been your experience in the past that the works on EReserves that you offer, that students have printed them out and have brought them?

A. I have seen that, yes.

Q. What was the frequency?

A. I don't know. I never took a count.

Q. Did you discuss the readings in class?

A. Yes.

Q. And so if students have just read them on screen, then they have to discuss them from memory basically?

A. Yes.

Q. And students are doing that now?

A. They do.

Q. Do some still print them out and bring them to class?

A. Some do.

Q. So looking back at the syllabus here, there's required reading materials, we talked about the two books. And then there's a third category called ERes course web page reserve materials?

A. Uh-huh.

Q. These are items made available through EReserves?

A. That's right.

Q. And those include readings that are required readings for the course?

A. Yes.

Q. Has it ever been suggested to you that EReserves, that you should not place -- strike that.

Has it ever been suggested to you from anyone at the university that you shouldn't put required readings on EReserves?

A. No, it had not.

Q. And you've used it for required readings?

A. I've had it under this category that I call required readings.

Q. If you could turn to page 4. And there's in the middle a paragraph called weekly postings guidelines?

A. Yes.

Q. And the first sentence indicates that students should submit a written reaction/response tied to one or more of the readings?

A. Uh-huh. Yes.

Q. Tell me what's involved there or what you're asking them to do?

A. They have to -- they have to write a brief posting on our discussion board for ULearn, used to be called WebCT, and in that posting they have to reveal that they've done some of the reading and that they have thought about what it means to them in the context of this course, what specifically it means with respect to their future teaching or current teaching.

Q. So it's your expectation each week that students will do the reading that's been assigned, correct?

A. Right.

Q. And in fact they would need to to comply with this course requirement?

A. Right. But they can be somewhat selective.

Q. If you could turn to page 6. Am I right that is the weekly readings assignments for the course?

A. Yes, you are right.

Q. And where we see Farrell and HMV, those are readings from the texts for purchase?

A. Required, yes.

Q. And where we see other entries, for example in the January 14th week a reading by R. Day, that's a work that's on EReserves?

A. That's right.

Q. And in January 28th, for example, there's a book by or an excerpt by Crookes, Chapter 6?

A. That's right.

Q. That's on EReserves?

A. Yes.

Q. And in the February 4th and February 11th weeks there's two chapters from the Richard & Lockhart book?

A. That's right.

Q. Those were on EReserves?

A. Yes, that's right.

Q. Those were the two that we were talking about before?

A. Yes.

Q. Could you just confirm for me that in the February 18th week that you assigned a chapter by Allwright and Bailey?

A. Yes.

Q. And that's from the book "Focus On The Language Classroom", is that right?

A. I think that's what it's called.

Q. In general is there anything in here, any inaccuracy or any reason to believe anything in here was not in fact assigned?

A. Not in fact assigned, these were the assigned readings.

Q. And it's the case that if the readings weren't part of the two required texts that they were placed on EReserves?

A. There were some other readings, and those were -- if you look at for instance April 8th, week 14, you'll see a URL. Those are journals that are online journals, open access journals.

Q. Okay. So in some instances it wasn't placed on EReserves, instead you gave the students a link?

A. Uh-huh.

Q. And if there's no link like that, then it was something you placed on EReserves?

A. That should be the case.

(Plaintiffs' Exhibit No. 114 was marked for identification by the reporter.)

BY MR. LARSON:

Q. Do you recognize this, Professor Belcher?

A. Yes, it looks familiar.

Q. If you look back at Exhibit 113.

A. Uh-huh.

Q. And look at the February 18th entry on the syllabus on page 6. Is what I've just put in front of you, Exhibit 114, the excerpt that you provided to students?

A. It looks like it.

Q. I'll represent to you that this was produced by your counsel in discovery in this litigation --

A. Okay.

Q. -- from the EReserve system.

Can you just take a look through and confirm that this is the excerpt that you assigned?

A. It does look like it.

MR. LAWSON: If we can mark this as 115, Plaintiffs' 115.

(Plaintiffs' Exhibit No. 115 was marked for identification by the reporter.)

BY MR. LAWSON:

Q. Do you recognize what I've marked as Plaintiff's 115 as the excerpt from Plaintiffs' Exhibit 113 from RJT, the Allwright and Bailey chapter called Receptivity - some relevant research?

A. I remember using two receptivity chapters.

Q. I'm sorry?

A. I remember using two chapters on receptivity.

Q. And this Plaintiffs' Exhibit 115 is a chapter that you assigned to students and placed on EReserves?

A. Yes. Actually they were archived, they were already there, so I didn't place them myself, myself.

They were on the archived reactivated course page.

Q. And then offered in this last semester to students?

A. Yes.

MR. LAWSON: Let's take a break.

THE VIDEOGRAPHER: Off the record at 10:13:58.

(Brief recess.)

THE VIDEOGRAPHER: This is tape 2. We're back on the record at 10:20:58.

BY MR. LAWSON:

Q. Professor Belcher, have you ever used a coursepack?

A. Yes.

Q. How long ago was that?

A. Probably six years ago.

Q. Do you recall the course that you used it in?

A. It was a course called teaching ESL composition.

Q. And why was it that you used a coursepack as opposed to, say, EReserves?

A. That was when I was teaching at Ohio State University and there was nothing like EReserves there.

Q. Okay. And for the spring 2009 syllabus of AL8900 that we've been looking at, did you consider using a coursepack for this course?

A. No, I didn't.

Q. Why not?

A. I haven't thought about coursepacks since I came to Georgia State because of EReserves.

Q. So why do you use EReserves rather than a coursepack? Let's put it that way.

A. It seems very convenient and it seemed to be part of the culture of the university.

Q. Do you understand that there are professors that use coursepacks?

A. I know that there are professors, I don't know of any in my department who do, but I know that there are some professors at the university who do.

Q. When you say it's part of the culture of the university, what do you mean?

A. When I joined the university faculty in my department told me -- they told me about EReserves when I was putting together my first syllabi.

Q. Are you aware of whether when a coursepack is used there are permission fees paid to publishers?

A. When I used them there were.

Q. And when you have used EReserves you've never paid permissions fees, correct?

A. No.

Q. Are there differences between providing the works to students in a coursepack versus on EReserves apart from the fact that one is hard copy and one is electronic?

A. And permissions are paid for coursepack, printed coursepacks, and there are no permissions as far as I know for EReserves.

Q. Right. Any other differences besides those two, to your mind?

A. The student -- well, there's the involvement of whoever produces the coursepack, that -- that organization is making some kind of a profit if it's Kinko's or the bookstore.

Q. And what about if it's the university bookstore?

A. Where I used coursepacks at Ohio State there were campus bookstores that were not owned by the university, they were separate from the university, but they carried the university's books.

Q. From the standpoint of the students, do you see a difference between their getting readings on EReserves versus getting them in the coursepacks, again, apart from the hard copy electronic distinction?

A. They pay for the coursepacks and they don't pay for the EReserve readings.

Q. Right. If you were to seek permission fees -- I'm sorry. If you were to seek permissions for the articles that you place on EReserves and pay permissions fees, do you have any sense of how you would go about doing that?

A. How I would find out?

Q. No, how you would actually pay, how the payment, how it would work if you wanted to pay?

A. I've never done it, so I don't really know how it would work.

Q. Are you --

A. As far as I know -- if there was information on the library web site about that I didn't see it.

Q. Are you aware that it's possible to get a permission from a publisher for any EReserves excerpts and pay a permission fee for that?

A. I am now. I wasn't in the past.

Q. What are you aware of now, what's your understanding?

A. That you can do that.

Q. And do you know where you go to do that?

A. What I heard about was I think called Copyright Clearinghouse. And I had looked up their web site. I heard -- I think I heard about this in the fair use workshop. And there's a web site at copyright.com.

Q. And you went and visited that web site?

A. Yes.

Q. What did you find?

A. I really didn't have a chance to check it out. I just wanted to see how easy it was to find it. And I just Googled it and was able to get to it right away.

Q. Do you have an understanding that EReserves postings don't need to be permissioned legally?

A. That was my understanding.

Q. And has that changed?

A. My -- well, my understanding is the guidelines have changed for posting.

Q. The guidelines at Georgia State?

A. And for the University System of Georgia.

Q. Uh-huh.

A. And that we need to think very carefully about fair use and that they're giving us a checklist to help us think through the fair use of items that we put on EReserve or that we want to put on EReserves.

Q. We'll look at the checklist in a bit.

Let's assume that you determine that a given use was not a fair use and that permission needed to be sought. Is it your understanding that you could go ahead and get that permission for use of the work on EReserves?

A. I assume. I've never done it. I've never tried it so I don't know what the mechanism is. But to find out specifically about how that would work specifically with EReserves, I would talk to the EReserves librarian.

MR. LAWSON: I would like to mark as Plaintiffs' 116 a document bearing the Bates number Georgia State 0000168.

(Plaintiffs' Exhibit No. 116 was marked for identification by the reporter.)

MR. LAWSON: While I have a moment, I should note for Plaintiffs' Exhibit 110 during the break we substituted in a version that has the proper Bates number on it as I indicated before in the record.

BY MR. LAWSON:

Q. Professor Belcher, do you recognize Exhibit 116?

A. Yes, sir, as a syllabus.

Q. And what syllabus is this?

A. A practicum syllabus from spring 2008.

Q. Okay. So this is the same course as the last syllabus we were looking at, just from a previous semester?

A. Yes.

Q. Okay. And under required reading materials, on the first page --

A. Yes.

Q. -- there's the Richards & Lockhart book?

A. Yes.

Q. That's the one we were talking about before?

A. Yes.

Q. So in spring of 2008 that was a required purchase?

A. Yes.

Q. Could you turn back to page 6. Is it the case here that where -- anywhere R & L is indicated that that's a reading from Richards & Lockhart?

A. Yes.

Q. And anywhere HMV is indicated that's a required reading from the second text?

A. Yes.

Q. And that the other readings indicated here were required readings as well?

A. They were assigned readings, yes.

Q. And those were placed on EReserves?

A. Yes.

Q. Just go to page 7, if you could, please. And look down at the bottom, there's a list of what appear to be books there without any sort of headings. Could you tell me what that list is?

A. For instance, where you see for April 17th it says Brown 2001, and then you look down at the bottom, that's the title of the text that that chapter comes from.

Q. Okay. But that wasn't a required text for purchase in the way that those others were?

A. No. No. I was just giving the attribution.

Q. Got it.

In the previous syllabus from 2009 that we looked at we discussed a reading by Allwright and Bailey?

A. Yes.

Q. That wasn't part of the assigned readings in the spring 2008 version?

A. I don't think it was.

Q. And why was that, do you recall?

A. It had something to do with my change in textbooks. And when I was using the Richards & Lockhart I felt that I didn't need Allwright and Bailey. But when I replaced it I decided that I wanted to add Allwright and Bailey.

Q. Okay. You can put that one aside.

(Plaintiffs' Exhibit No. 117

was marked for identification
by the reporter.)

BY MR. LAWSON:

Q. We'll mark as Plaintiffs' Exhibit 117 a document Bates labeled Georgia State 000158.

Do you recognize this?

A. This is another practicum syllabus from fall of 2006.

Q. Okay. And again under the required readings the Cambridge -- sorry. The Richards & Lockhart text was assigned --

A. Yes.

Q. -- and required?

A. Yes.

Q. And the EReserves readings were required reading for the class as well?

A. Yes.

Q. If you could go to page 6. Can you confirm for me that what is on page 6 and 7 are the weekly reading assignments?

A. Yes, they are.

Q. And again, those chapters that aren't part of the two required texts were placed on EReserves?

A. Yes.

Q. Let's just take a look, for example, I see in weeks 2, 3 and 4 there are various entries for a book by someone named Crookes?

A. Yes.

Q. But why is it that you chose to use EReserves for those rather than having someone purchase the book?

A. Probably because I had -- for one thing I was requiring the students to buy the two other books and when I require books I'm using the entire book.

Q. So if you use something less than the entire book you would put it on EReserves instead?

A. Sometimes I have asked students to purchase books that I'm not using the entire book for, but it would be at least half.

Q. And what's the reason if you're using, say, two chapters from a book, why wouldn't you have them just purchase it?

A. Because they won't buy it.

Q. Why not?

A. Students tend to be very pragmatic and in fact this is a common complaint on student evaluations, if you don't use most of the book they say they see no reason to purchase it.

Q. Even if it's assigned reading, they would just bypass it is your sense?

A. They may.

Q. And is it important to you as a teacher to consider those student concerns in deciding what to assign for purchase?

A. It's important for me to have students do the readings I want them to do and to find ways to encourage them to do the readings.

Q. And is it the case that if you assign -- have them purchase something where they only read -- where they read something less than the entire book that that can have a negative impact on your teacher evaluations?

A. Not in my overall teaching effectiveness, no.

Q. I want to make sure I understand. Because you said a moment ago you see in evaluations at the end of the semester --

A. I've seen that sort of thing. I've seen that sort of comment before.

Q. Okay.

A. Actually not necessarily on my own, but I read everybody's evaluations and at Ohio State I was the director of a program and I read every teacher's evaluation.

Q. And are those evaluations used in terms of considering the faculty's continued employment and tenure decisions and things like that?

A. They can have an impact.

Q. Looking again at page 6. Let's just stick with our Crookes example.
A. Okay.
Q. So you made the determination I take it not to have the students purchase this book but you put it on EReserves?
A. That's right. That's right.
Q. At any point did you consider whether to seek permission from the publisher of the book to place it on EReserves?
A. No, it didn't occur to me.
Q. You can put that one aside. Let's mark as Plaintiffs' Exhibit 118 a document that has the Bates number Georgia State 0002809.
(Plaintiffs' Exhibit No. 118 was marked for identification by the reporter.)
BY MR. LAWSON:
Q. Do you recognize this document?
A. Yes. It's another syllabus for qualitative research methods, a course I taught in spring 2007.
Q. And you indicated I believe before that this course you may teach again in the future?
A. Yes. I did teach it once after this.
Q. And when was that?

A. That was in fall 2008.

Q. Okay. Do you recall when you taught it in the fall of 2008 whether you used the same syllabus?

A. I used a different syllabus, a very different syllabus.

Q. Do you know whether that was produced in this litigation?

A. I don't know. I think at some point I had to provide all my syllabi to somebody.

Q. Okay. Take a look under the required text section of the first page. You see that?

A. Yes.

Q. Okay. And again were the first two books there the Silverman and Creswell books that were required for purchase in the course?

A. Yes.

Q. And those were books where students were assigned most if not all of the book to read over the course of the semester?

A. Yes.

Q. And --

A. The entire book.

Q. Okay. The next line says supplemental readings with an ERes password?

A. Yes.

Q. By supplemental, you mean supplemental to the two texts?
A. Yes.
Q. Supplemental doesn't mean optional?
A. Those were also assigned readings.
Q. Okay. Just below that there's a mention of WebCT?
A. Yes.
Q. How do you use WebCT or ULearn --
A. ULearn.
Q. -- in your courses?
A. I use the discussion board for all of my courses. Students post weekly reader responses.
Q. Do you use it for anything else?
A. I have maybe two or three times posted PDFs on ULearn.
Q. And what was the reason for doing that as opposed to, say, putting them on the EReserve system?
A. I did it for this particular course because I did not get my EReserve list ready in time for the term. And in fact the EReserve course page was not available for my students until I think the end of the second week. So I created PDFs for the things that were going to be on EReserve because they weren't available to my students. I put them on the ULearn site.

Q. As a general matter, though, is it fair to say that you use EReserves rather than WebCT?

A. Right. I almost never use WebCT.

Q. Do you have any intention going forward of posting readings on ULearn as opposed to EReserves?

A. No.

Q. Is there a reason you chose EReserves over WebCT if it has that capability?

A. I was in the habit of using EReserves and not thinking of ULearn as a place to post readings.

Q. Okay. Can you turn to the third page of this syllabus. And can you just confirm for me that what we see here are the assigned readings for each week of the course?

A. Yes.

Q. And that apart from those identified as Silverman and Creswell that the readings were placed on EReserves?

A. Yes. Except that some were also -- I think there were three that were also on the ULearn site.

Q. Do you know which three those were by any chance?

A. The -- for week 3, Tedlock, Mackey & Gass and Canagarajah.

Q. Now, do you remember that from back in 2007 or do you remember that because you've reviewed your records recently and saw something that indicated that?

A. I recently was asked to provide this syllabus again, so I looked at it again.

Q. I see.

A. Maybe a week ago or something like that.

Q. Now, there are some entries, if you look, for example, at week 3, the Tedlock entry you just mentioned.

A. Yes.

Q. Are you aware that's a chapter from the Sage "Handbook Of Qualitative Research"?

A. Yes.

Q. And it says 2000 there. That's a second edition.

A. Yes.

Q. That's what you were telling me about?

A. Yes.

Q. You used the second.

If you look down to week 14. There's an entry for Silverman that says parenthesis doing after it. That's a different Silverman book?

A. Yes.

Q. Give me a moment, if you would.

Can you go back to Plaintiffs' Exhibit 64, which was the course reserves page that we looked at before.

A. Uh-huh.

Q. Is Plaintiffs' Exhibit 64 the course reserves page for AL8961 syllabus we're looking at right now?

A. Yes. Yes.

Q. And if you look at week 2 on Exhibit 64.

A. Yes.

Q. You'll see it says Lincoln and Guba 2000, the first entry?

A. Uh-huh.

Q. And if you look at your syllabus --

A. It's different.

Q. Yeah, which one is the correct one?

A. Because I had three different syllabi. I changed the syllabus several times. And just before the term started I switched from Lincoln and Guba 2000 to Lincoln and Guba 1985.

Q. So the entry that's in the syllabus is the reading that you used for the course?

A. Yes.

Q. Okay. And how did students get that if what's posted on the EReserve system is Lincoln and Guba 2000?

A. I sent them a PDF.

Q. Turn to the last page of this syllabus.

There's a list here headlined E-articles?

A. Yes.

Q. Can you tell me what's in this list?

A. These are articles that I required my students to read, and they're all in electronic journals that the GSU library has electronic subscriptions to.

Q. So these are works that they, from the information you gave here, could look up somehow through the library and get access to?

A. Very easily.

Q. So these weren't on EReserves?

A. No. I don't know if there were links on EReserves, but there was no reason to post those articles on EReserve.

Q. Is it ever the case that you put material on EReserves that may be reading in addition to the assigned readings for the course?

A. What do you mean?

Q. Other sort of optional or, you know, recommended readings for the students?

A. What I put on EReserve was what was in the syllabus as assigned reading. It is the case that I sometimes ended up making something optional after the term got underway.

MR. LAWSON: Okay. We'll mark as

Plaintiffs' Exhibit 119 a document with a Bates number Georgia State 0002796.

(Plaintiffs' Exhibit No. 119 was marked for identification by the reporter.)

BY MR. LARSON:

Q. Do you recognize this?

A. Yes.

Q. Can you just tell me what it is?

A. It's syllabus for practicum, the graduate practicum class in ESL/EFL teaching from fall 2004.

Q. And again this is the same course where we've looked at several syllabi previously?

A. Yes.

Q. This one appears to be laid out a little differently on the front. There are two required texts, correct?

A. Yes.

Q. Including the Richards & Lockhart that we talked about before?

A. Yes.

Q. And then there are -- there's an indication that there's some readings on EReserves, is that right?

A. Yes.

Q. And then there's another category here called

journal articles/chapters in reserve?
A. Yes.
Q. What's that category?
A. I'm assuming it's EReserves. I was using -- this was the first time I taught the course. I was using somebody else's template for the syllabus. So for instance, the Murphy article would have been on EReserves.
Q. Is it possible that what this category of articles was was hard copy reserves at the library?
A. I don't remember that being the case.
Q. Okay. And can you just confirm for me, turning to page 7, that these are, pages 7, 8 and 9, list the required readings for the course?
A. Yes, they do.
Q. And those other than the Richards and -- well, Wajnryb?
A. Wajnryb.
Q. Are readings that were placed on EReserves?
A. That's my memory, yes.
MR. LAWSON: Can we just go off the record for five minutes or so.
THE VIDEOGRAPHER: Off the record at 10:52:06.
(Brief recess.)

THE VIDEOGRAPHER: Back on the record at 10:55.

MR. LAWSON: We'll mark as Plaintiffs' Exhibit 120 document with Bates number Georgia State 0005843.

(Plaintiffs' Exhibit No. 120 was marked for identification by the reporter.)

BY MR. LAWSON:

Q. Do you recognize this document?

A. Yes. It's another syllabus for another course. This was the seminar in language teaching and specifically genre theory from fall 2007.

Q. Could you turn to page 4, please. You'll see in week 2 and week 3 there are entries for Swales 1990?

A. Yes.

Q. Indicating chapters 2 and 3 and chapters 7.4. Were those readings placed on EReserves?

A. I assume they were, but I can't remember.

Q. Do you recall having assigned the Swales book or using that Swales book previously? Strike that.

Let me ask a previous question, which is do you know what the Swales book is that's referred to here?

A. It's his book called "Genre Analysis" published in 1990.

Q. Okay. And do you recall having used that book in other courses?

A. I might have used it once before.

Q. Did you teach a course called AL9370 seminar in language cognition and communication?

A. Did it have the subtitle of Genre Theory?

Q. It did.

A. Yes. The title was somewhat changed.

Q. Do you recall whether you used the Swales book as a required text in that course?

A. I can't remember. I would have to look at the syllabus.

Q. All right. Fortunately that's the copy I was just searching for. We'll see if we can find it at a break.

A. I know I used readings. I don't remember if I required the book or not.

Q. Okay. Just talk a bit about the process of using EReserves.

A. Uh-huh.

Q. When you've had items used on EReserves, who is it that's done the copying and the scanning of the actual excerpts that are placed on the system?

MS. GARY: Objection. Vague. What time

period are we talking about?

BY MR. LAWSON:

Q. I'm talking about prior to the new policy. I mean, if it's been different at different times, tell me. But say for the 2009 semester, who did the copying, scanning of the excerpts that you used?

A. For 2009 since I was using mostly reactivated things they were already there. The few things that I added I photocopied and took to the EReserves place in library south and they do the scanning. The GSU library does the scanning to actually put it on the EReserves course page.

Q. So you took them a photocopy?

A. Right.

Q. And then they scanned that photocopy?

A. That's my understanding.

Q. And did you ever provide them with the actual book from which you did the scanning?

A. No.

Q. I'm sorry, the book from which you did the photocopying?

A. No. No.

Q. Did they ask you or did anyone ask you whether you owned a copy of the book?

A. No.

Q. Okay. Is it your understanding that there was a requirement that you own the book to use it on EReserves?

A. I either owned the book or it was a library book.

Q. My question is a little different.

A. Right. Right.

Q. But was it your understanding that it was a component of the policy at the time --

A. Right.

Q. -- that you owned a copy?

A. I don't have any awareness of that.

Q. When you went to library south, did you fill out any sort of forms?

A. Yes.

Q. Okay. And what were those forms that you filled out?

A. They -- they were asking for a list of the items that I wanted to put on EReserve.

Q. Let's do it this way. I'll show you what's been marked previously as Plaintiffs' Exhibit 19.

Was it a form that looked like this?

A. Yes.

Q. You can set that aside actually.

So when you submitted works in the past to the library, you filled out something that looked like this?

A. Yes.

Q. And do you recall signing the box in the middle?

A. I must have.

Q. Okay. You see in the middle it says -- in the box in the middle, second sentence or third sentence, for book selections you may place one chapter or less than 20 percent of a content from a book?

A. Yes.

Q. It's the case, is it not, that for some of your courses you used more than one chapter from a book, right?

A. Yes.

Q. And did you do that knowing that there was a rule stating that you could place only one chapter?

A. No. My understanding is as it says, one chapter or less than 20 percent.

Q. So if it's two chapters but less than 20 percent --

A. That was my understanding.

Q. And did you actually tally the pages of the selections you were using to see if you were under the 20 percent?

A. Usually I did. And if I didn't the librarian did it for me and let me know.

Q. Were there situations where they told you that you were over 20 percent?

A. Yes. And then those things did not go on EReserve.

Q. When was it if you recall that that happened?

A. It happened once. One specific instance that I remember was an undergraduate practicum course I think in 2007.

Q. Okay. Do you remember the work that was at issue?

A. It was a Michigan book on teaching English as a foreign language.

Q. And the library told you that the excerpt that you had selected was more than 20 percent?

A. Too much, right.

Q. And what did you do?

A. I didn't put all of it on EReserves.

Q. So you cut some pages?

A. Cut some chapters.

Q. You see the second to the last sentence says for digitized items the original item must be owned either by the GSU library or by the instructor placing the item on reserve?

A. (Nods head affirmatively.)

Q. Do you have any memory of whether the library checked with you to see whether you owned the items that you were submitting?

A. No.

Q. Do you understand that to be a component of the new policy?

A. I assume that it is.

Q. And what's that assumption based on?

A. I haven't read specifically this, but ownership is part of fair use. I know in the fair use checklist that's one of the items.

Q. Is whether or not you own a copy of the work from which you're making copies?

A. Right. Right. Right.

Q. Do you have a sense of whether the 20 percent or one chapter limitation is part of the new policy?

A. My understanding is that it is not worded that way. There's no amount specified as a percentage.

Q. Okay. So it could be 50 percent but if it passes the fair use checklist then you're okay?

A. I can't imagine how that would pass.

Q. Why not?

A. 50 percent sounds like more than a small amount.

Q. Where would you draw the line on what's a small amount?

A. Well, that's where it's becoming much more complicated because deciding what is significant, it seems like we're being given a lot more factors, a lot more information about how to make these decisions and it's not strictly a percentage issue.

Q. Do you find --

A. So it would depend on the work.

Q. Do you find the new checklist complicated?

A. I would say it certainly gives you much, much more to think about. And in that sense it's certainly more complicated than this.

Q. In the past prior to the new policy being put in place, say last year for example, were you aware apart from this 20 percent and what was stated in the box we were just looking at of any more general university policy on copyright?

A. Not really. No.

Q. Okay. So you had never read any previous -- any previous policy?

A. Only with respect to EReserve, that's all that I'm aware of.

Q. And it was just what's in this box here?

A. I think so. Yes.

Q. When you submitted things in the past using this form, again apart from the 20 percent one chapter limitation here, did you do any sort of fair use analysis?

A. I didn't.

Q. Do you have an understanding that if a use is educational that it's basically automatically fair use?

A. I understand educational, the purpose being educational as a significant part of the determination of fair use.

Q. Okay. But not --

A. But not the only consideration.

Q. Okay. Prior to the new policy being promulgated, were you aware of fair use law or the concept of fair use?

A. I had some awareness, but not a very great awareness of it.

Q. Okay. Do you have an understanding of why the new policy was promulgated?

A. Apparently the university or the University System of Georgia decided that they needed to revisit their policy and come up with something that was much more specific.

Q. Have you discussed the new policy with any people in your department?

A. Yes.

Q. What has been the nature of those conversations?

A. I went, as I mentioned earlier, I went to the first workshop on copyright and fair use and several teachers, faculty members who were teaching in the summer asked me if what they wanted to do in the summer was fair use.

Q. They asked -- oh, did they show you what they were planning to post?

A. No. No. They asked me if putting 20 percent of the works that they wanted to use on EReserves was okay.

Q. And what did you tell them?

A. I told them they needed to talk to the librarian.

Q. And who is the librarian?

A. I don't know the name. But there is a librarian assigned to EReserve.

Q. Just so I'm clear, the people that asked you these questions were people that attended the --

A. No, they did not.

Q. They had not attended. Okay.

A. That's why they asked me.

Q. So you referred them to the librarian?

A. Right.

Q. Is it your understanding that there's other resources available apart from the librarian to answer those sorts of issues?

A. Legal affairs.

Q. Do you know whether those people that asked you those questions are going to be taking the same class that you took?

A. The workshop?

Q. Yeah.

A. I don't know. I'm assuming that there will be more, but there were only two and they were given at the end of the term. So I would -- I assume there will be more in the future.

Q. Do you know that for sure?

A. No, I don't.

Q. Just show you some documents that have been marked previously as Plaintiffs' Exhibits 11 through 14. Do you recognize these documents?

A. Yes, I've seen them online.

Q. Okay. This is the new policy that you --

A. Yes.

Q. -- said before you looked at. Okay. And you read through these?

A. I did read them. Again, I felt like I got the gist of them.

Q. And when was that?

A. These were actually presented at the workshop that I went to.

Q. You can keep those handy, but why don't you just set them to the side.

A. Okay.

Q. Have you mark as 121, Plaintiffs' 121 a copy of the fair use checklist. And this has been previously marked but because I may ask you to actually write on it, I'm going to mark it with a new number.

(Plaintiffs' Exhibit No. 121 was marked for identification by the reporter.)

BY MR. LAWSON:

Q. Do you recognize this?

A. Yes, I have seen this.

Q. Okay. And this is the fair use checklist that's part of the new policy?

A. Yes.

Q. Let's take a look. You see factor 1, purpose and character of the use?

A. Yes.

Q. Do you have an understanding of what transformative means?

A. I have some idea.

Q. And what is your understanding?
A. That the work has changed in some way and also used for a purpose other than what the author originally intended.
Q. And is it your understanding that a posting on EReserves would be transformative?
A. No.
Q. Okay. How about there's a line that says nonprofit educational, is it your understanding that an EReserve posting would be considered nonprofit educational?
A. Yes.
Q. Would it be considered teaching?
A. Yes.
Q. And research or scholarship?
A. No.
Q. Criticism, comment and news reporting or parody?
A. Not as I have used them.
Q. Personal study?
A. No.
Q. Use is necessary to achieve your intended educational purpose?
A. Yes.
Q. Tell me about that. What is your

understanding of that factor?

A. I see this as tied to what my learning objectives are for a course and whether or not the readings would advance the learning objectives.

Q. Is there a situation where a reading that you chose for the course wouldn't have this box checked?

A. I wouldn't use it if I didn't think it was necessary.

Q. Right. So by virtue of you choosing to use it in the course this box gets checked, correct?

A. Having this box here makes me think it is necessary. So if I checked the box and used the work, then I would be making the decision or the determination that it's necessary for the course.

Q. But you generally -- well, let me ask you. Would you generally start by choosing the works you want to use and then completing the checklist for those works?

A. I've never used this checklist.

Q. Okay.

A. I probably would come up with a group of readings and the readings would be chosen to supplement. And my use of the term supplement, the required textbooks that are purchased. And if I were going to put them on or if I was thinking of putting them on

EReserve now, then I would go through the checklist for the individual works.

Q. Okay. And so having done that, isn't it the case that when you got to this last factor, last checked box under factor number 1 that you would check that because the work would be one that you had chosen to use in the class?

A. It would make me think, do I really need this.

Q. Let's look at the column on the right.

A. Uh-huh.

Q. What is your understanding of commercial activity?

A. My sense of that is that there is some profit involved, financial profit.

Q. Profit to --

A. Whoever is engaged in the activity.

Q. The activity of copying -- well, let's say in the case --

A. Of using the work. If, for instance if my students were paying me to give them copies then I would consider that commercial.

Q. Okay. Let me ask more specifically. For use of articles on EReserves as you've used them in the past and I think you indicated you will in the future, would you check the box for commercial activity?

A. No.

Q. Would you check profiting from use?

A. No.

Q. Would you check entertainment?

A. Probably -- I can't imagine a situation in which I would.

Q. What's your understanding of what that factor means?

A. The way this is -- this is configured here it looks like entertainment is something separate from something that's educational, which is what seems a little strange to me because I think something can be educational and entertaining at the same time. So this seems to be saying if it's educational it can't possibly be entertaining.

Q. What gives you the idea that those are sort of an either/or choice?

A. Mutually exclusive. Just the fact that they're in these different columns.

Q. Okay. So sitting here it's not clear to you -- well, I don't want to put words in your mouth.

A. There's only one work that I can think of that I put on EReserves that I could consider entertaining as well as educational.

Q. And what is that?

A. And that was two chapters from a David Sedaris book.

Q. So would you check entertainment if you were putting that book on EReserves?

A. See, I think I would want to talk to somebody to find out exactly what's meant by entertainment here. Because I used the David Sedaris chapters in my Intercultural Communication class because of the points he makes in those essays.

One was about taking French lessons in Paris and another one was about riding on the Metro in Paris and running into some obnoxious American tourists. And there was some very interesting messages that came across in those texts about Americans abroad and how they relate with others, other people who are not American.

And my students on ULearn when they posted about it said these were the funniest things they had read in a long time. But they thought there was a really serious subtext, which is what -- that was exactly what I wanted them to get from those essays.

Q. So let's just say apart from that particular Sedaris excerpt, though, generally am I right that you probably would not check entertainment for --

A. Right.

Q. -- your usual EReserve postings?
A. Right.
Q. What about nontransformative?
A. I don't think putting anything on EReserve is transformative.
Q. Meaning you would check nontransformative or not?
A. Yeah, it's nontransformative.
Q. Okay. What about for publication?
A. It's not publication.
Q. I'm sorry, what do you mean?
A. It's not for publication.
Q. Okay. So you would not check that box?
A. Right.
Q. What about for public distribution?
A. It's -- there would be no public distribution.
Q. So you don't consider distribution to your class to be public distribution?
A. Not as I understand public distribution.
Q. What do you understand it to be?
A. I would understand it as making the access much broader than for a specific class for a specific period of time.
Q. Okay. And then what about the use exceeds that which is necessary to achieve your intended

educational purpose? What do you understand that to include or mean?

A. See, I understand that as causing me to think about whether or not this is really necessary. So if I determined that it was really necessary then I would not be checking that box.

Q. Let me ask it this way. If you had an excerpt where filling out this checklist caused you to conclude that maybe you had included some stuff that you maybe didn't need, would you include all of it and then check this box or would you just cut the stuff you didn't need?

A. I think it would depend on the entire analysis.

Q. Okay. How so?

A. But that seems to me a really important factor or subfactor or whatever this is. And if it seemed to me this was more than I really needed I probably would cut the parts that seemed nonessential.

Q. Okay. And so if you did that then you would check over in the weighs in favor of fair use column, you would check the use was necessary?

A. Yes.

Q. And so just so I'm clear, and correct me if I'm wrong, as I tally these up for this factor I think you indicate three checks that you would make in terms of weighs in favor of fair use for EReserve postings that the first and the second, nonprofit and teaching, and then use as necessary at the bottom of that column?

A. Yes. Yes.

Q. And then on the weighs against fair use side I think you said you would check nontransformative?

A. Yes.

Q. And then I think that was it, correct?

A. I think so.

Q. And so what would you conclude then at the bottom of factor 1 in terms of whether the factor weighs in favor of or weighs against?

A. It seems to weigh in favor of.

Q. Okay. And would that, the analysis we just did, would that change depending on the particular EReserves work we were talking about or would the analysis essentially be the same for any EReserves posting?

A. I assume it would be essentially the same. But as I said, I've never actually gone through this.

MR. LAWSON: I understand. Why don't we break here. I think our tape is almost over.

THE VIDEOGRAPHER: Off the record at

11:22:56.

(Brief recess.)

THE VIDEOGRAPHER: This is tape 3. We are back on the record at 11:32:38.

BY MR. LAWSON:

Q. Okay. Professor Belcher, if you could, take out Plaintiffs' Exhibit 113. It's the 209 syllabus from AL8900.

A. Okay.

Q. And if you turn to page 6, please. I thought we'd make this a little more specific.

If you look at page 6, the February 18th week, and then page 7, the March 18th week, there were two chapters there by Allwright and Bailey --

A. Yes.

Q. -- that you provided to students. And those were on EReserves, correct?

A. Yes.

Q. And we actually looked at the excerpts before, is that right?

A. Yes.

Q. The PDFs. So why don't we just again to focus this a little bit, let's talk about those as an example.

If you were specifically to offer or complete a checklist with respect to those two chapters, would anything from what you just told me in terms of your factor 1 analysis change on the checklist?

A. No, I don't think so.

Q. Talk about factor 2. It's on page two of the checklist. And let's look at the left hand column, weighs in favor of fair use.

For these two particular chapters, would you check published work?

A. Yes.

Q. Would you check factual nonfiction work?

A. Yes.

Q. And would you check important to educational objectives?

A. Yes.

Q. Tell me what's your understanding of that factor?

A. That -- well, my understanding of factor 2 in general is that it's referring to the nature of the work itself. And I see this as a work that is educational and I chose it because it fit in with the educational objectives of the course that were not being met as well by the required purchased textbooks alone.

Q. What's your understanding of the difference if any between the third check box under factor 2 and the last check box under factor 1?

A. They seem similar, but in factor 2 it seems to being referring to the nature of the work itself whereas in factor 1 this is putting more emphasis on the purpose, the reason why you're using the work.
Q. Well, isn't important to educational objectives going to the use to which you're putting it? You don't mean to suggest -- sorry.
A. They're certainly related. I don't see them as mutually exclusive, right.
Q. I mean, do you understand that factor and the last one in factor 2 to mean the work just in general is important to educational objectives apart from how you're using it?
A. No, I would think of it in the context of the course.
Q. In the right hand column under factor 2 --
A. Yes.
Q. -- is there anything that you would check for --
A. No. For these, no.
Q. And so how would you come out on this factor?
A. In favor of fair use.
Q. And that would be basically 3 to zero here?
A. Yes.
Q. Okay. So having seen that factor 1 and factor

1 tilt in favor of fair use, would you continue to factor 3 if you were filling this out?

A. Yes.

Q. Let's look at the first box, small portion of work used. Would you check that box?

A. For the two chapters?

Q. Yes.

A. Yes.

Q. Okay. And what about the next one, portion used is not central or significant to entire work as a whole?

A. You know, that one is hard for me to judge partly because I didn't originally put these on EReserve, I was -- this is something that somebody -- another teacher of the course did and I just -- it was part of what I reactivated. So I haven't looked at the entire work.

I would have to go -- I'd have to get a copy of the entire work to make that determination.

Q. And can you say at a general level what you understand this factor to mean or to be measuring?

A. I think it would vary from book to book. I think in some single author books it may be easier to determine than in, say, an edited anthology where every chapter is completely different and by different authors and they're addressing somewhat different topics.

Q. Can you imagine a situation in that latter scenario, an edited book with multi chapters by different authors where any single chapter would be considered the heart? I'm sorry, you didn't use the word heart so let me ask the question again.

A. Yeah, I didn't use the word heart.

Q. Can you imagine where a given chapter would be considered central or significant to the entire work as a whole?

A. Perhaps an introduction.

Q. And why the introduction?

A. It would certainly be significant. Whether or not it's central I'm not sure. So I don't see -- if something is central I would also see it as significant. But it seems like things could be significant but not necessarily central.

Q. Okay. Do you understand that this factor you checked this, though, if it were -- well, you would check this if it were neither central nor significant, right?

A. Right.

Q. Okay. What about factor 3 here -- again, let's --

Well, sticking with factor 2, your testimony is that for the Allwright and Bailey chapters at least that you wouldn't know how to check this without going back to the book?

A. I'd have to look at the book.

Q. Okay. For the third box, amount taken is narrowly tailored to educational purpose, would you check that with respect to these two chapters?

A. I think that I would.

Q. And again, same question as I asked before, how would you view this check box or this subfactor as differing from the last factor of -- the last subfactor under factor 1 and the last subfactor under factor 2?

A. I see the difference, the main difference between this one and the previous having to do with amount being narrowly tailored, so this would make me think about do I really need two chapters, do I really need to use the entire chapters. Could I just achieve the same purpose by using part of each chapter or one of the chapters. So it would force me to think about the exact amount that I'm using.

Q. Now, how is that different from what you told me under factor 1, looking at the last two boxes on each side under factor 1 where use is necessary or use exceeds that which is necessary to achieve your educational purpose?

A. Yeah, they seem related. I don't see a huge difference.

Q. Okay. Going back to factor 3.

Again with respect to the Allwright and Bailey chapters, would you check any of the boxes on the right hand side?

A. I wouldn't, but again with the second one I would need to look at the whole book.

Q. All right. So let's say even if you looked at the whole book and determined that what you were taking was in fact the heart, it's the case, is it not, that you would still be two to one in favor of fair use under this factor?

A. No, I'm not -- I think I need more direction in determining what heart of the work means. And that was something that was addressed at the fair use workshop but not in great detail. So I think I could use more guidance in making that determination.

Q. Would you agree that what the heart of the work is to some degree lies in the opinion of the person making that determination?

A. I'm sure that there's always going to be subjectivity, but I think that it could also be the case that more than one person would agree that the same part of the book is the heart of the work.

Q. So just to return to my question from before, regardless of what you checked for whether these chapters do or don't constitute something central or significant or the heart, it's correct, is it not, that you would come down for this factor in favor of fair use?

A. From my understanding of these chapters I think I would still decide in favor of fair use.

Q. It would either be 3 zero or the 2 to 1 basically, right?

A. Yes.

Q. And let's look at factor 4. Again, just as a reference point let's use these two chapters.

Would you check the first box no significant effect on market or potential market for copyrighted work?

A. Yes.

Q. Tell me about why you would check that?

A. You know, I don't see the copyright date on this but I think these are not recent books. I mean, this is not a recent book.

Q. I've actually got a copy of the book here if you'd like to take a look.

A. Okay.

Q. I don't know if we want to mark that as exhibit or -- if you want to check the, you know, the PDFs against the chapters in the book, please do.

MS. GARY: If she is going to be testifying as to the copyright date, let's mark it as an exhibit.

MR. LAWSON: Okay. What's our next number? Can we mark that as 122.

(Plaintiffs' Exhibit No. 122 was marked for identification by the reporter.)

THE WITNESS: It's 1991. I think I would have to do a little bit of research.

BY MR. LAWSON:

Q. And what would that research entail?

A. I might go to a couple of web sites, one would be Amazon to see if they're still selling this.

Q. And if you discovered that Amazon was selling this --

A. As new copies.

Q. Uh-huh.

A. Again, I need to -- I think that this whole sequence works together.

Q. Okay.

A. So since I haven't really looked at the whole book, my assumption is that these two chapters are not the heart of the book. So I think that they would not -- using them -- putting them on EReserve would not have a significant effect on the marketability of the book.

Q. Okay. And just tell me what the chapters being the heart or not have to do with the impact on the market so I understand your reasoning.

A. Yeah, I'm assuming that the heart question could have to do with whether or not people decide to buy the work. So if you've already given them the heart of the book they may decide, well, I don't need the rest of the book.

Q. Okay. So is your assumption there that if you give them something that's not the heart of the book then they might go out and buy it?

A. Yes.

Q. Okay.

A. My students have done such things.

Q. So in this case, let's assume that your determination were that it's not the heart, then you would say no significant effect on --

A. Yes.

Q. Now, in considering that factor, that subfactor, would you consider only your particular use in terms of the impact or would you consider use by other professors if they were to offer these chapters as well?

A. Using this checklist I would only be thinking about my use.

Q. What about the second box, use stimulates market for original work?

A. Again, if it's still in print I think it's entirely possible that the use could stimulate interest in buying the book.

Q. Again, is that subject to the limitation that if you've given them the heart in your excerpts then it might not?

A. Yes, that could have an affect.

Q. What about the third box, no similar product marketed by the copyright holder?

A. I don't know of a similar product.

Q. What do you understand that factor to mean?

A. A book that covers the same topics in a very similar way.

Q. And do you understand that to mean a book by the same publisher, for example?

A. Not necessarily. It could be competing publishers.

Q. So you would check that box then?

A. Yes.

Q. What about no longer in print?
A. That's what I don't know.
Q. That you'd have to go to Amazon or somewhere online to see?
A. Or to Cambridge, the Cambridge web site.
Q. What about licensing or permission not available?
A. Certainly right now I can't say if it's unavailable.
Q. You can't say that it's unavailable?
A. Well, I don't know what the availability -- okay. I guess I'm using too many negatives.
I don't know about the availability of licensing for use on EReserves of this work.
Q. Okay. So not knowing, what would you do confronted with this box?
A. I guess I would need to find out what it is you would need licensing for. I need some guidance on what you need to get permission for and then find out how I would go about doing that.
Q. Where would you seek out that information?
A. Again, my first resource would be the EReserves librarian.
Q. So am I to understand that for any time you fill out this checklist you would have to go to a

librarian to find out if licensing or permission is available or not for the particular work you're filling out the list for?

A. No, no. I think I'm not explaining myself very well.

Q. That's okay. That's why we're here.

A. I think the very first time I ever used this there would be a lack of clarity and there would be some things I would need to check with somebody to get some clarification on. I think after I learned how to use it that would be less and less the case. And if I wanted to check on the availability of licensing I guess I would go to copyright.com. I haven't used that site so I don't know how that works.

Q. But again, for each, at least for the first time that you used a given excerpt you would need to go outside the checklist to see whether permission was or was not available for the work?

A. Right.

Q. And so sitting here now you can't say how you would check this necessarily with respect to this Allwright and Bailey book as our example?

A. I'm assuming that I can go to copyright.com and find this out.

Q. Would you check supplemental classroom use?

A. If supplemental means optional, no.

Q. What is your understanding of what supplemental means here?

A. I think they mean not required so I would not check that.

Q. Okay. How about one or few copies made or distributed?

A. Yes, I would check that.

Q. What's your view of what would -- of the number of copies that would put you over the more than few?

A. Well, EReserves is putting one PDF online. So I don't know, it's one copy that they're making available to a limited number of students. So how that counts as copies I'm not sure. But is a copy a view, a downloading?

But my understanding is EReserve is one copy made -- that students are given access to so it seems like one or few to me.

Q. So it seems like one to you is what you're saying, right?

A. In one sense it seems like one.

Q. Well, what is your understanding technically when students view that PDF, do you view that as copy being distributed to them?

A. It could be viewed that way.

Q. What's your view?

A. I see it as one copy that's made available to more than one person.

Q. Let me ask the question again. When a student clicks on the link on EReserves and views that PDF, do you understand that to be a distribution of a copy to that student?

MS. GARY: Objection. Asked and answered.

MR. LAWSON: I don't think it's been answered. But I'll ask it again.

THE WITNESS: I guess I'm having trouble with the term copy, what copy really means.

BY MR. LAWSON:

Q. Okay. What if the student downloads the PDF to their hard drive of their computer, do you understand that to be the distribution of a copy to them?

A. That sounds like a copy.

Q. Okay. And if they print it out?

A. That sounds like a copy.

Q. Okay. If every student in the class downloaded and printed out the copy, would that change your answer to this box we're looking at?

A. I think I would still see it as few copies.

Q. Even if there were, say, 50 students in the class?

A. Well, I've never taught a class of that size.

Q. So for your classes it would be few even if everyone --

A. It would be few.

Q. What about the next check box, user owns lawfully acquired?

A. I would check that.

Q. You own the book?

A. I or the library.

Q. And what about restricted access to students or other appropriate group?

A. Yes.

Q. Okay. So just so we're clear, if I have this right, I have six boxes that you would have checked for sure, the first three and the last three?

A. Okay.

Q. Well, I don't want to --

A. Yeah. Yeah.

Q. And then a couple in the middle that you would need to do a little investigation for, correct?

A. Right.

Q. Okay. Let's look at the right hand side. Step back for one second and ask a different question.

A. Okay.

Q. Given that the first three factors all weighed in favor of fair use, would you still complete factor 4?

A. Yes.

Q. You would. How come?

A. I think it's one of the most important factors.

Q. And why is that?

A. I guess it ties in with my -- I'm not sure why I do, but it seems important in terms of copyright and ownership and affecting the rights of ownership. I don't know. I don't have a specific enough understanding of copyright. I just instinctively feel that effect on market seems to be an important issue.

Q. If you determined that your use for whatever reason would have a significant impact on the market, can you imagine a situation where you would not use the work even if the first three factors tilted towards fair use?

A. Yes.

Q. Let's take a look at the second column here. The first box, significantly impairs market or potential market for copyrighted work or derivative.

Again, using our Allwright and Bailey example, would you check that box?

A. No.

Q. How about the second box, licensing or permission reasonably available?

A. After having done research I might check that because it may be available.

Q. Okay. So you just don't know sitting here, you'd have to do some work?

A. Right.

Q. How about numerous copies made or distributed?

A. I would say no.

Q. How about repeated or long term use that demonstrably affects the market for the work?

A. I would not check that.

Q. What's your understanding of that factor or when that would be checked?

A. If there were no limit on the access to the work online, if it were just available without any term limits at all.

Q. Do you mean no limits -- if it were just left up you mean?

A. Right. Right. Right. Right. Right.

Q. Not archived?

A. If it were on a web site and always available.

Q. Now, what about -- so strike that.

If you teach the same class every year or two and reactivate your page and use the same work again, if you did that, say, for example, this fall for this Allwright and Bailey example, would you consider that to be repeated?

A. It would be repeated. I don't know that it would affect the market for the work.

Q. Required classroom reading?

A. Yes.

Q. User does not own lawfully acquired or purchased copy of original work?

A. I wouldn't check.

Q. Unrestricted access?

A. I would not check that.

Q. So overall on this factor by my count it would be six to one putting aside the couple of boxes that you'd need to investigate?

A. Yes.

Q. So this factor would weigh in favor of fair use for you?

A. Yes.

Q. And so overall if you wanted to use this work again in a subsequent semester, is it your feeling that you could use it based on this?

A. It seems to be the case. That doesn't mean I would use it again.

Q. And if you didn't, though, it would be for pedagogical reasons, not for fair use reasons, right?

A. Right. Although that becomes tied to fair use, too.

Q. How so?

A. Well, if I just -- if I determined that because of, for instance, other books that I was requiring students to purchase, if they covered this material then there would be no necessity for it. So that wouldn't work well with fair use.

Q. I see. I just want to look at one other example and see if it impacts your analysis or your view of the checklist. Can you take out 118.

A. What is 118?

Q. It's the syllabus from the spring of 2007 from AL8961.

And if you could turn on that to the third page.

Can we go off the record for just one moment?

THE VIDEOGRAPHER: Off the record at 12:00.

(Brief recess.)

THE VIDEOGRAPHER: Back on the record at 12:01:32.

BY MR. LAWSON:

Q. Actually would you turn to what is the Bates number in lower right hand corner 2812 of this document.
A. Okay.
Q. And take a look at weeks 1, 14 and 15.
A. Yes.
Q. And you see there, and just correct me if I'm wrong, that you assigned over the course of those three weeks chapters 22, 11 to 13, 23 and 24 of Silverman's -- of what's identified as Silverman Doing?
A. Yes.
Q. And am I correct that that book is "Doing Qualitative Research" by David Silverman?
A. Yes.
Q. So let's just -- with that in mind, that example, looking at the checklist, let's go back to factor 1 and just tell me if you were to apply the checklist to these six chapters of Silverman being placed on EReserves, would any of the previous analysis you've given me for factor 1 change at all?
A. I think the entire analysis of all of this would change.
Q. Okay. Well, let's go through it then.
A. My view of using it --
Q. Okay. Let's walk through it then.
A. -- that much of the book.

Q. I'm sorry.

A. I don't think I would use as much as I did.

Q. Let's walk through it and see how it would work.

Let's go to factor 1. Would you check for the six chapters nonprofit educational?

A. Yes.

Q. Teaching?

A. Teaching. And use is necessary to achieve intended educational purpose. That's part of what I think I would have to revisit.

Q. And what would be your consideration there?

A. I would look at all of those chapters again more carefully and I might decide -- and this has more to do with amount. I might decide that I either didn't need all of those chapters or didn't need complete chapters. But this is hypothetical.

Q. Yeah, understood.

So you would -- what you're saying you might potentially cut some chapters?

A. Right. I'm saying I would analyze them in a way that I didn't when I put them on EReserve --

Q. Okay.

A. -- for 2007.

Q. Okay. And so for in terms of the weighs in favor of fair use column, use is necessary to achieve your intended educational purpose, you can't say sitting here whether or not you would check that box because you might in fact not use all six chapters, is that right?

A. I would probably go through -- I guess this is what partly what I need some -- will need some guidance on if and when I use this, assuming I use EReserves again, if we should look at chapters individually or if you're using more than one take that as a single unit.

Q. Okay. Sitting here now do you have an understanding of what the proper analysis is, which way to do it?

A. It seems that it's as a unit because it's from the same work.

Q. Okay. And what about in the case of --

A. But it also seems that this encourages you to think about each component. So you may be shrinking the unit.

Q. So just so I'm clear. So you would take the six chapters together and compare them to the entire book, not each chapter individually?

A. No, I might do that, too, as well. But --

Q. Would you fill out a checklist, just very practically, again recognizing that just as you're sitting here now, would you fill out a checklist, an individual checklist for each Silverman chapter or would you fill out one checklist for the five or six or whatever?

A. Yeah, my initial understanding, but again I haven't used the checklist yet --

Q. Understood.

A. -- was that for every single item you put on EReserve we're supposed to go through the checklist. But thinking about it now, it would make more sense if there are several items from the same book to look at them all together because then especially for some of these other items, if you're thinking of the effect on the market.

Q. Are you aware of anything in the policy that suggests one way of doing it or the other?

A. The current, the new policy?

Q. Yeah. Are you aware that it's anywhere in there that tells you you should do a list for each --

A. I haven't read it carefully enough. So I'm unclear on that.

Q. What about if there's a situation where you've got an edited book with multiple chapters by different authors?

A. Right.

Q. How would you view -- how would you do it in that situation, what's your understanding?

A. Yeah, then it becomes complicated and I think -- I think that maybe there needs to be some more specificity in the guidelines in how to use the checklist. Because I think you do need to think about each chapter and its necessity in terms of meeting intended educational purposes. But you also need to look at, if you're using multiple chapters you need to look at whether or not that's -- that together composes the heart of the work.

Q. Okay. Let's just look -- going back to the R6 Silverman chapters. So let's --

My understanding then is for the last subfactor it would be hard to say until you determined if you wanted to use all of these chapters or some subset, right?

A. Right. Right. Since I wasn't at the time thinking of all of these factors.

Q. Right. Now, let's look at the other column. Is there any box on the right hand side that you would check?

A. You know, the only one -- the one that I need to -- would need to revisit is the last one.

Q. Right. And -- correct me if I'm wrong, but what you said before I think was that if you determined that your use exceeded what you -- was suitable for your purpose that you would scale back your use, right?

A. Right, right.

Q. And then that box wouldn't get checked, right?

A. Right.

Q. Whatever number of chapters you might use, wouldn't factor 1 as you analyzed here come out in favor of fair use even if you checked --

A. Whatever number of chapters? I'm sorry.

Q. It was a poorly phrased question. I apologize.

Even if you were to check the bottom right hand box on the weighs against fair use category --

A. Oh, okay.

Q. -- your overall tally for factor 1 would still weigh in favor of fair use, correct?

A. In terms of the number of boxes checked, it would seem to.

Q. It would be either 3 to zero or 2 to 1, correct?

A. I guess then the question is should the determine -- should these be weighted equally.

Q. What's your understanding of how they're weighted?

A. The checklist doesn't indicate a difference in weighting.

Q. And do you have any reason to believe that you should weigh them differently?

A. Well, in my mind some of these items seem weightier than others.

Q. And which ones?

A. For instance, in the left hand column, use is necessary to achieve intended educational purpose seems especially important.

Q. And the same for use exceeds that?

A. Yes.

Q. So is it the case then -- would it ever be the case that if you found that your use exceeded that which is necessary to achieve your intended educational purpose that you might say factor 1 tilts against fair use even if you had two checks in the left hand column and only one check in the right?

A. In that case I would rethink what I was going to put on EReserves so that it wouldn't exceed.

Q. All right. And then --

A. And that's what I see is the value of this checklist.

Q. And so then factor 1 would favor fair use?

A. Then if I scaled back.

Q. Let's look at factor 2. Again, using these

Silverman chapters, would you check published work?

A. Yes.

Q. Fiction or nonfiction work?

A. Yes.

Q. And important to educational objectives?

A. Yes.

Q. And what about on the right hand side?

A. None.

Q. Okay. So this factor would weigh in favor of fair use?

A. Yes.

Q. Is that regardless of whether you used all six or scaled it back to some lessor number of chapters?

A. If we're looking only at this factor it's fair use.

Q. I'm just asking about this factor, not the overall.

A. Yeah.

Q. On factor 3 small portion of work used, how would you approach that?

A. See, from my old understanding it was small.

Q. Tell me about that.

A. From my new understanding it doesn't seem small.

Q. What was your old understanding?

A. My old understanding was 20 percent is okay.
Q. And those chapters --
A. It's about 20 percent.
Q. At some point you did the math on that?
A. At some point library reserves did the math.
Q. Okay. And now your new understanding is that the six chapters would not be a small portion?
A. Well, this is what I took from the workshop I went to. And actually Cynthia was saying she thought that 10 percent was more reasonable.
Q. Okay.
A. Although she also said that that's -- that percentage is not what should determine the decision.
Q. Well, let's -- let me ask it this way. If you did determine that you wanted to use all six chapters of this book, would you say that's a small portion? Would you check this box?
A. Now?
Q. Uh-huh.
A. I wouldn't use all six chapters.
Q. Okay. I'm asking a slightly different question, which is if you used all six?
A. If I used all six --
Q. Yeah.
A. That still seems relatively small so probably

yes. But this is a situation that I don't think I would be in.

Q. Because you would cut back the number of chapters?

A. Now I think so.

Q. Okay.

A. Now that I have a better understanding and there are different guidelines.

Q. Okay. But again, recognizing that -- well, strike that.

What about portion used is not central or significant to the entire work as a whole?

A. I don't think they were central. I wouldn't say they were insignificant, but I wouldn't call them central.

Q. So would you say they're significant?

A. Well, it would be hard to say that there's a chapter that isn't significant in the book. I mean, it would be hard to say there are -- to call certain chapters insignificant.

Q. So you wouldn't check this box then, is that right?

A. Well, I would say it's not central.

Q. Okay. So you would check it because it's not -- I just want to -- okay.

A. Yeah. But I do find this problematic, the central or significant.

Q. Okay. And again the third box, how would you approach the third box, amount taken is narrowly tailored to educational purpose?

A. I am assuming that I would revisit the amount and what I would end up with would be narrowly tailored.

Q. So you would, whatever amount you ended up with of the six chapters --

A. (Nods head affirmatively.)

Q. Let's look at factor 4.

Well, on factor 3 then recognizing that we don't know how many chapters you would end up with, you would cut in some way that would end up with you checking all three of these boxes?

A. That would be the goal.

Q. Okay. Do you have a view under factor 4 whether using all six chapters would have a significant effect on the market or potential market for the copyrighted work?

A. I think given the size of the book it probably would not.

Q. Okay.

A. So I would say no significant effect.

Q. And what about again, let's assume you used all six, use stimulates market for original work?

A. I think so, yes.

Q. What about no similar product marketed by the copyright holder?

A. I know of no similar products, so I would check that.

Q. What about no longer in print?

A. It is in print as far as I know.

Q. What about licensing or permission unavailable?

A. I would have to do the research.

Q. For the reasons discussed before?

A. Right. I couldn't say it's unavailable without looking into it.

Q. And then supplemental classroom reading?

A. I couldn't check that.

Q. Okay. One or few copies made or distributed?

A. I would check that.

Q. And user owns lawfully acquired or purchased copy?

A. Yes.

Q. Okay. And restricted access?

A. Yes.

Q. About what the right hand side, again assuming you used all six, would you say -- check anything on the right?

A. Well, it could be that licensing or permission is available.

Q. Okay.

A. That would have to be determined.

Q. Uh-huh.

A. Required classroom reading. I think that's it.

Q. Okay. So that even if you used all six chapters factor 4 would weigh in favor of fair use?

A. I think --

Q. As you would fill it out sitting here now?

A. Yeah. Well, this is just hypothetical in a way because you're asking me about something that I would probably not now put on EReserve given my understanding, more complex and fuller understanding of fair use. So in the context of how I had understood fair use it seemed like it would not affect the market.

Q. But isn't what you just told me even assuming you used all six chapters that factor 4 would come out with six checks on one side?

A. Yeah, I think so. I think so. I think so.

Q. Okay.

A. With the addendum that I think now I would not use as much as I used because this checklist would make me rethink exactly how much is essential in terms of amount.

Q. Understood. But isn't it the case that even though you might do that that under this checklist as you've analyzed it that it would allow you to use all six chapters and would come out with a conclusion of fair use?

A. That's a good question. But you know, I can only speak for myself and I know that using this -- becoming familiar with this checklist is changing me to rethink how I choose things for EReserve.

MR. LAWSON: Why don't we take a couple minutes. That's probably it.

THE VIDEOGRAPHER: Off the record at 12:20:09.

(Brief recess.)

THE VIDEOGRAPHER: Back on the record at 12:23:05.

MR. LAWSON: I have no further questions.

MS. GARY: I have no questions at this time.

MR. LAWSON: Thank you, Professor Belcher.

THE WITNESS: Oh, can I add something?

MR. LAWSON: If you'd like, sure.

THE WITNESS: Okay. I did teach this course again in this past fall and I was able not to use EReserves again and --

BY MR. LAWSON:

Q. You're talking about AL8961?

A. Yes.

Q. Taught in the fall of 2008?

A. Uh-huh, uh-huh.

Q. And when you taught it in that semester you didn't use EReserves?

A. Right.

Q. Why not?

A. I found three books that were much more effective at covering the material. And I also discovered that the library has electronic journals that had articles that covered all of the material that I needed. So I'm -- what I learned was that through using the electronic subscriptions that the library has I can -- and because of -- and keeping abreast of new publications it will -- it looks like it's becoming easier to find other ways to make things available to students.

Q. You taught AL8900 in the spring 2008 semester, correct? Or I'm sorry, the spring 2009 semester.

A. Oh, I'm sorry, I was talking about the qualitative research course.

Q. I understood. I'm asking you a different question.

A. Yes.

Q. You taught AL8900 this past spring, right?

A. Right. Right.

Q. And you used EReserves for that?

A. Yes.

MR. LAWSON: No more questions.

MS. GARY: No questions.

THE VIDEOGRAPHER: Off the record at 12:25:03.

(Deposition concluded at 12:25 p.m.)

E R R A T A   S H E E T

I, the undersigned, Diane Belcher, do hereby certify that I have read the foregoing deposition and that, to the best of my knowledge, said deposition is true and accurate (with the exception of the following corrections listed below).

PAGE / LINE CORRECTION
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NOTARY PUBLIC   SIGNATURE

DATE--------------

MY COMMISSION EXPIRES:

C E R T I F I C A T E

G E O R G I A:

FULTON COUNTY:

I hereby certify that the foregoing deposition was taken down, as stated in the caption, and the questions and the answers thereto were reduced to printing under my direction; that the preceding pages represent a true and correct transcript, to the best of my ability, of the evidence given by said witness upon said hearing. And I further certify that I am not of kin or counsel to the parties to the case; am not in the regular employ of counsel for any of said parties; nor am I in anywise interested in the result of said case.

This, the 12th day of May, 2009.

Teresa Bishop, RPR, RMR

CCR No. B-307

My commission expires 11-21-11.

DISCLOSURE

STATE OF GEORGIA
COUNTY OF DEKALB

Deposition of Diane Belcher

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Teresa Bishop
RPR, RMR, CCR B-307